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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,042	06/26/2007	Richard Allan Spears		5156

7590
Mrs Alison Spears
Rasprodz (UK) Limited
96 Padstow Road
Churchward
Swindon, SN2 2EG

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EXAMINER

MYHR, JUSTIN L

ART UNIT

PAPER NUMBER

3714

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/597,042

Applicant(s)

SPEARS, RICHARD ALLAN

Examiner

JUSTIN MYHR

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-25 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 08 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/22)
Paper No(s)/Mail Date 7/08/2006
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 7/08/2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Specification

Content of Specification

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.

- (i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.
 - (j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
 - (k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).
2. The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.
3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

4. Applicant is reminded to include at least separate sections for Brief Description of the Drawings and Detailed Description of the Invention. It is recommended though not required that applicant include a Brief Summary of the Invention.
5. The use of the trademark "Intel Pentium 4" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Objections

6. Claims 4, 6, 9, 10, 12-14 and 19-24 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend on another multiple dependent claims. See MPEP § 608.01(n). Accordingly, the claims 4, 6, 9, 10, 12-14 and 19-24 have not been further treated on the merits. Claims 7, 9, and 11 are objected to as depending on claims 6 and 8 respectively and for not overcoming the above objection.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 4, 6-14 and 19-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The above claims are multiple

dependent claims which depend on other multiple dependent claims therefore the scope of the claim is unclear.

9. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Item "and/or" is indefinite because it is not clear whether applicant intended the use of "and" or the use of "or". Examiner recommends applicant use either "or" for the broadest interpretation of the claimed limitation or "and" for the narrowest. For the purpose of this office action examiner will interpret the above limitations as using the "or".

Claim Rejections - 35 USC § 101

10. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

11. Claim(s) 15, 18 and 25 are rejected under 35 USC 101 as being directed to non-statutory subject matter because these are method or process claims that do not transform underlying subject matter (such as an article or materials) to a different state or thing, nor are they tied to another statutory class (such as a particular machine). See *Diamond v. Diehr*, 450 U.S. 175, 184 (1981) (quoting *Benson*, 409 U.S. at 70); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978) (citing *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)). See also *In re Bilski* (Fed Cir, 2007-1130, 10/30/2008) where the Fed. Cir. held that method claims must pass the "machine-or-transformation test" in order to be eligible for patent protection under 35 USC 101. Examiner recommends applicant

amend claim 25 to include "a system comprising" or "an apparatus comprising" and
amend claims 15 and 18 to include further structure of the system claim.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1-3, 5, 15, 18, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Hofton (GB 2376421 A).

As per claim 1, Hofton teaches a method of generating a broadcast from a broadcasting station in response to an input from a telephone to a computer associated with the station (abstract), wherein: a numerical code is stored in the computer (Fig. 1, item 18); a telephone link is established between the telephone and the computer (Fig. 1); an operator of the telephone causes a signal comprising DTMF tones to be transmitted along the telephone link to the computer by selectively activating keys of a keypad of the telephone (page 2, lines 3-13, page 3, lines 7-11, page 4, lines 8-10, page 6, lines 16-20, and page 7, lines 3-7); upon receipt of the DTMF tone signal, the computer transcribes the tones into their associated sequential numerical values and compares those values with the stored numerical code (page 2, lines 3-13, page 3, lines 7-11, page 4, lines 8-10, page 6, lines 16-20, page 7, lines 3-7, and page 10, lines 18-28); and wherein: the computer sends a signal to the broadcasting station to broadcast a result of the comparison made (page 10, lines 4-17).

As per claim 2, Hofton teaches a method wherein the broadcast takes place in real time (page 10, lines 4-17 over the radio).

As per claim 3, Hofton teaches a method wherein the broadcast is of an audio and/or video signal (page 10, lines 4-17 over the radio).

As per claim 5, Hofton teaches a method of identifying a numerical code stored in a computer (abstract), wherein a telephone link is established between a remote telephone and the computer (Fig. 1), wherein an operator of the telephone causes a signal comprising DTMF tones to be transmitted along the telephone link to the computer by selectively activating keys of a keypad of the telephone, wherein upon receipt of the DTMF tone signal (page 2, lines 3-13, page 3, lines 7-11, page 4, lines 8-10, page 6, lines 16-20, and page 7, lines 3-7), the computer transcribes the tones into their associated sequential numerical values and compares those values with the stored numerical code (page 2, lines 3-13, page 3, lines 7-11, page 4, lines 8-10, page 6, lines 16-20, page 7, lines 3-7, and page 10, lines 18-28), and wherein the computer is associated with a broadcasting medium and is arranged to produce a broadcast of a result of the comparison made (page 10, lines 4-17).

As per claim 15, Hofton teaches a electronic system for comparing a signal comprising a sequence of DTMF tones representing numerical values received along a telephone line with a numerical code stored within the system, and broadcasting a result of the comparison made (Fig. 1 and page 2, lines 3-13, page 3, lines 7-11, page 4, lines 8-10, page 6, lines 16-20, page 7, lines 3-7, and page 10, lines 4-28).

As per claim 18, Hofton teaches a system wherein a correlation, or a lack of correlation, between the derived numerical sequence and the stored numerical code is broadcast (page 10, lines 4-17).

As per claim 25, Hofton teaches an arrangement comprising a telephone arranged to generate DTMF tone signals by operation of keys of its keypad (page 2, lines 3-13, page 3, lines 7-11, page 4, lines 8-10, page 6, lines 16-20, and page 7, lines 3-7), a computer arranged to transcribe DTMF signals into an associated numeral sequence (page 2, lines 3-13, page 3, lines 7-11, page 4, lines 8-10, page 6, lines 16-20, and page 7, lines 3-7), a communications link for transmitting the DTMF signals from the telephone to the computer (Fig. 1), and a broadcasting station (page 10, lines 4-17), wherein the computer is arranged to generate and to store a randomly generated numerical code (page 2, lines 3-13, page 3, lines 7-11, page 4, lines 8-10, page 6, lines 16-20, and page 7, lines 3-7), and wherein the computer is arranged to compare the number entered into the telephone keypad, as transcribed, with the stored numerical code (page 2, lines 3-13, page 3, lines 7-11, page 4, lines 8-10, page 6, lines 16-20, page 7, lines 3-7, and page 10, lines 18-28), and wherein the broadcasting station is arranged to broadcast the correlation, or lack of correlation, between the numerical sequence and the stored numerical code (page 10, lines 4-17).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

16. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hofton (GB 2376421 A) in view of Rogalski et al. (US Pub. No. 2004/0132468 A1 hereinafter referred to as Rogalski).

As per claim 16, Hofton does not specifically teach a system comprising a computer having a sound card responsive to the DTMF tone signal so as to transcribe the tones into an associated sequence of numbers. However, Rogalski does teach using the sound card to translate DTMF tone signals (paragraph [0027]). Hence, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Hofton with Rogalski, since Hofton is modifiable to use a sound card to translate the DTMF signals thereby reducing the need for specialized equipment.

As per claim 17, Hofton does not specifically teach a system comprising a modem for use in effecting the matching of the numerical values with the numerical code. However, Rogalski does teach the use of a modem (paragraph [0022]). Hence, it would have been obvious to one of ordinary skill in the art at the time the invention was

made to have combined the teachings of Hofton with Rogalski, since Hofton is modifiable to use a modem to facilitate communications and translations thereby reducing the need for specialized equipment.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Yacenda (US Pub. No. 2001/0003100 A1) teaches a lottery gaming system in which information is communicated to a central server using DTMF tones.

Tevlin (US Pub. No. 2002/0106073 A1) teaches a computer which communicates with a telephone system by generating DTMF tones using the installed sound card.

Reese (US Pat. No. 4,969,183) teaches a telephone lottery system which uses DTMF tones and which stores player's selections.

Entenmann et al. (US Pat. No. 4,996,705) teaches a telephone lottery system in which users select a lottery number which is compared to a randomly generated lottery number created by the system in order to determine a winner at the time the player calls.

Mitsuhiko (US Pat. No. 5,363,439) teaches a system for decoding DTMF signals.

Pocock et al. (US Pat. No. 5,518,253) teaches a gaming system in which players call in Bingo selections with the game's outcome broadcast over the television.

Steingold et al. (US Pat. No. 5,537,143) teaches a gaming system in which players call in an answer to a question displayed during a television broadcast with results being announced in real time.

Brenner et al. (US Pat. No. 6,554,709 B1) teaches a gaming system in which users use a telephone system to input wagering information into a gaming system and receive output through a television broadcast.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUSTIN MYHR whose telephone number is (571)270-7847. The examiner can normally be reached on Monday-Thursday 7:30 a.m. - 5:00 p.m., EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dmitry Suhol can be reached on (571)272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JUSTIN MYHR/
Examiner, Art Unit 3714
8/31/2010

Art Unit: 3714

/Ronald Laneau/
Primary Examiner, Art Unit 3714